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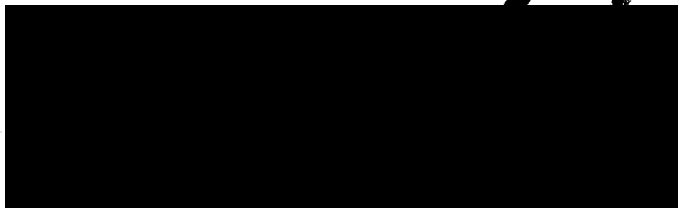
U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

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FEB 12 2004

FILE:



Office: SAN ANTONIO, TEXAS

Date:

IN RE:

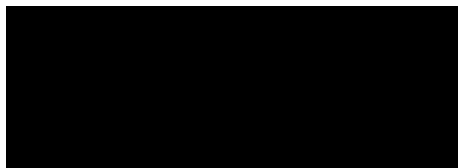
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 8 U.S.C. § 1182(a)(9)(A)(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple criminal offenses, for which the aggregate sentences to confinement were five years or more. In addition the record reflects that on January 22, 1988 the applicant was removed from the United States pursuant to an order of deportation and he was present in the United States without a lawful admission or parole in August 8, 1989, without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant is inadmissible under § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) of the Act, 8 U.S.C. § 1182(h) under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii) in order to remain in the United States to reside with his spouse.

The district director determined that § 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief. Additionally the district director found that the Attorney General's discretion to approve a waiver under section 211(h) of the Act is not warranted in this case and denied the application accordingly. See *District Director Decision* dated January 25, 2003.

On appeal, counsel states that the district director failed to apply the correct law and he abused his discretion. In addition, counsel stated the he will need 90 days to gather evidence and submit a brief. The appeal was filed on March 4, 2003 and as of today no additional documentation was received by counsel.

A review of the record reveals that the applicant has an extensive criminal record in the United States. The aggregate sentences to confinement for his multiple criminal convictions were five years or more making him inadmissible to the United States under Section 212(a)(2)(B) of the Act. The record further reflects that the applicant was removed from the United States pursuant to an order of deportation and reentered without a lawful admission or parole. As such, he is subject to section 241(a) of the Act, which reads in pertinent part:

(5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General [now Secretary, Department of Homeland Security] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act and the alien shall be removed under the prior order at any time after reentry.

The applicant was removed from the United States on January 22, 1988 and reentered illegally in or about August 1989. He had never been granted permission to reapply for admission. Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. Therefore, any other grounds of inadmissibility or possible waivers of those grounds are irrelevant and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.